

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power Corporation,)
Vermont Electric Cooperative, Inc., and Vermont Electric)
Power Company, Inc. for a certificate of public good,)
pursuant to 30 V.S.A. Section 248, to construct up to a 63)
MW wind electric generation facility and associated)
facilities on Lowell Mountain in Lowell, Vermont, and the)
installation or upgrade of approximately 16.9 miles of)
transmission line and associated substations in Lowell,)
Westfield and Jay, Vermont)
)

Order entered: 1/21/2011

**ORDER RE: GREEN MOUNTAIN POWER MOTION TO PRECLUDE
DYER-DUNN, INC. CROSS-EXAMINATION**

I. Introduction

At a duly-noticed status conference held on January 19, 2011, Green Mountain Power Corporation ("GMP") made a motion before the Public Service Board ("Board"), asking the Board to prohibit cross-examination by Dyer-Dunn, Inc. ("DDI") of certain witnesses whose testimony GMP contends is outside the scope of DDI's intervention, or in one instance will result in "friendly" cross-examination. Specifically, GMP contends that cross-examination of witnesses Castonguay, Gravel, Jewkes, Kieny, Kvedar, Vissering,¹ Wallin, Wright and Zimmerman would fall outside the scope of DDI's intervention, while cross-examination of witness Blomberg would constitute friendly cross-examination. In this Order we determine that DDI will not be allowed

1. GMP's motion lists Ms. Vissering as a petitioner witness, and includes her testimony in the description of witnesses that address topics outside the scope of DDI's intervention. However, Ms. Vissering is not a petitioner witness. She is a witness for Green Mountain Club. Additionally, Ms. Vissering's testimony addresses the question of aesthetics, a topic on which DDI was in fact granted intervention to address with respect to impacts to the property it owns near the project site. Accordingly, we are assuming that GMP's inclusion of Ms. Vissering in the category of petitioner witnesses whose testimony falls outside the intervention scope of DDI was in error, and that GMP intended to include Ms. Vissering within the issue of friendly cross-examination. However, as explained in this Order, we are prohibiting cross-examination of certain witnesses due to failures on DDI's part, rather than the substance of GMP's arguments, rendering this distinction somewhat irrelevant.

to cross examine the witnesses identified in GMP's motion due to its failure to comply with certain directives in the Board's January 13, 2011, memorandum and its failure to appear at the January 19, 2011, status conference.

II. Procedural History

On January 13, 2011, the Board, through the office of the Clerk, issued a memorandum noticing the parties that a status conference was to be held on January 19, 2011, in the Board's hearing room. The primary purpose of the status conference was to discuss the scheduling of witnesses. The memorandum directed parties to submit revised cross-examination estimates prior to the status conference, or to confirm that the estimates originally provided by petitioners in a matrix attached to a letter filed January 12, 2011, were accurate.² The memorandum stated that no time would be allocated for cross-examination by a party that failed to submit revised estimates or to confirm the accuracy of the January 12, 2011, estimates for any witness they wished to cross-examine.³ DDI did not file revised cross-examination estimates or a confirmation that its estimates in the January 12, 2011, matrix were accurate.⁴ The memorandum also specifically directed that parties' cross-examination estimates should not include witnesses and subject matter outside the scope of their interventions, nor should they include time for "friendly cross." Accordingly, these matters were ripe for discussion as part of the scheduling of witnesses included in the status conference notification.

During the status conference, counsel for GMP made an oral motion that DDI not be allowed to cross-examine certain witnesses because such cross-examination would either fall outside the scope of DDI's intervention, or would constitute prohibited "friendly cross." Given the number of witnesses involved in GMP's motion and our need to review the motion in more

2. That attachment consisted of a matrix of all witnesses that have prefiled testimony in this proceeding and various parties' estimated cross-examination times for each witness. This matrix indicated that DDI wished to cross-examine the witnesses that are the subject of GMP's motion.

3. Memorandum from Susan M. Hudson, Clerk of the Board, to Docket 7628 parties dated 1/13/11 at 2.

4. Per the memorandum, we could simply decline to allocate any time for DDI to cross-examine any witnesses in this proceeding for its failure to comply with this directive, not just the ones that are subject to GMP's motion. We have not decided to take that step at this time.

detail, we asked GMP to memorialize its motion in writing. GMP provided a written copy of its motion to the Board on January 20, 2011.

DDI was not represented at the status conference even though it had been sent notice that it would be taking place and that witness scheduling would be discussed.⁵ As a result, DDI did not avail itself of an opportunity to respond to GMP's motion.

Additionally, given the need for the parties to have a ruling on GMP's motion in a timely fashion to allow for development of a witness schedule prior to the February 2, 2011, start date for the technical hearings, we did not set a response date for DDI to file a written reply to GMP's motion.

III. Discussion

We are prohibiting DDI from cross examining witnesses Castonguay, Gravel, Jewkes, Kieny, Kvedar, Vissering, Wallin, Wright, Zimmerman and Blomberg due to DDI's failure to file revised cross-examination estimates or to confirm that the estimates in the January 12, 2011, matrix were accurate, and due to its failure to appear at the January 19, 2011, status conference, thereby losing its opportunity to present argument on GMP's motion.

Our January 13, 2011, memorandum explicitly stated that a party would not be allocated any cross-examination time in the schedule for the technical hearings if it did not file revised cross-examination estimates or confirm the accuracy of the estimates in the January 12, 2011, matrix prior to the January 19, 2011, status conference. DDI failed to take either of these actions, and while we are limiting our ruling today to those witnesses covered by GMP's motion, we could simply disallow any cross-examination by DDI of any witness in this proceeding. Additionally, while DDI was sent the January 13, 2011, memorandum and was thereby informed that the subject of witness scheduling would be discussed, it neither attended the status conference nor did it seek a continuance or contact the Board in any way to explain why it would be absent. These failures on DDI's part provide ample basis for our decision today.

5. Due to the number of witnesses and limitations on their availability, cross-examination estimates are an integral part of witness scheduling in Board proceedings.

Accordingly, DDI will not be permitted to utilize any time during the technical hearings to cross-examine witnesses Castonguay, Gravel, Jewkes, Kieny, Kvedar, Vissering, Wallin, Wright, Zimmerman and Blomberg.

SO ORDERED.

Dated at Montpelier, Vermont, this 21st day of January, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: January 21, 2011

ATTEST: s/ Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)